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3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 EDWARD GARZA,

Case No. 2:18-cv-00995-GMN-BNW

7 Petitioner,

8 **ORDER**

v.

9 BRIAN WILLIAMS, et al.,

10 Respondents.

11 Following the Notice of Appearance (ECF No. 34) by the Federal Public Defender,

12 IT IS ORDERED:

- 13 1. The Federal Public Defender, through Kimberly Sandberg, Esq., is appointed as
14 counsel for Petitioner Edward Garza pursuant to 18 U.S.C. § 3006A(a)(2)(B). Counsel
15 will represent Garza in all federal proceedings related to this matter, including any
16 appeals or certiorari proceedings, unless allowed to withdraw.
- 17 2. Garza will have 90 days from entry of this order to file an amended petition and/or seek
18 other appropriate relief. Neither the foregoing deadline nor any extension thereof
19 signifies or will signify any implied finding as to the expiration of the federal limitation
20 period and/or of a basis for tolling during the time period established. Garza at all times
21 remains responsible for calculating the running of the federal limitation period and
22 timely asserting claims, without regard to any deadlines established or extensions
23 granted herein. That is, by setting a deadline to amend the petition and/or by granting
24 any extension thereof, the Court makes no finding or representation that the petition,
25 any amendments thereto, and/or any claims contained therein are not subject to
26 dismissal as untimely. *See Sossa v. Diaz*, 729 F.3d 1225, 1235 (9th Cir. 2013).

- 1 3. Respondents must file a response to the amended petition, including potentially by
2 motion to dismiss, within 60 days of service of an amended petition, and Garza may
3 file a reply thereto within 30 days of service of the answer. The response and reply
4 time to any motion filed by either party, including a motion filed in lieu of a pleading,
5 will be governed instead by Local Rule LR 7-2(b).
- 6 4. Any procedural defenses Respondents raise to the counseled amended petition must be
7 raised together in a single consolidated motion to dismiss. Procedural defenses omitted
8 from such motion to dismiss will be subject to potential waiver. Respondents must not
9 file a response in this case that consolidates their procedural defenses, if any, with their
10 response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any
11 unexhausted claims clearly lacking merit. If respondents do seek dismissal of
12 unexhausted claims under § 2254(b)(2), they must do so within the single motion to
13 dismiss, not in the answer, and specifically direct their argument to the standard for
14 dismissal under § 2254(b)(2) as set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24
15 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, will be
16 included with the merits in an answer. All procedural defenses, including exhaustion,
17 instead must be raised by motion to dismiss.
- 18 5. In any answer filed on the merits, Respondents must specifically cite to and address the
19 applicable state court written decision and state court record materials, if any, regarding
20 each claim within the response as to that claim.
- 21 6. All state court records and related exhibits must be filed in accordance with LR IA 10-
22 3 and LR IC 2-2 and include a separate index identifying each exhibit by number or
23 letter. The index must be filed in CM/ECF's document upload screen as the base
24 document to receive the base docket number (*e.g.*, ECF No. 10). Each exhibit must then
25 be filed as "attachments" to the base document—the index—to receive a sequenced
26 sub-docket number (*e.g.*, Exhibit A (ECF No. 10-1), Exhibit B (ECF No. 10-2),
27 Exhibit C (ECF No. 10-3), and so forth). If the exhibits will span more than one filing,
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the base document in each successive filing must be either a copy of the index or volume cover page. *See* LR IC 2-2(a)(3)(A).

7. A paper copy of any exhibits over 50 pages—for this case—must be delivered to the Las Vegas Clerk’s Office and addressed to the attention of “Staff Attorney.” Paper copies must be (i) file-stamped copies, bearing the document number assigned by the CM/ECF system, (ii) securely bound on the left side to display the document number, and (iii) tabbed to display exhibit numbers or letters on the right side or bottom of the copies. *See LR IA 10-3(i); LR IC 2-2(g).*

DATED: October 10, 2019

~~GLORIA M. NAVARRO
UNITED STATES DISTRICT JUDGE~~